



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0256]

RIN 1625-AA09

Drawbridge Operation Regulation; Fox River, DePere to Oshkosh, WI.

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule for all drawbridges over the Fox River between DePere, WI and Oshkosh, WI. This rule will establish drawbridge schedules that coincide with lock schedules during the boating season and standard winter drawbridge schedules.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type USCG-2016-0256. In the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-

6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of proposed rulemaking
RFA	Regulatory Flexibility Act of 1980
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
WIS-DOT	Wisconsin Department of Transportation
FRNSA	Fox River Navigational System Authority
CN-RR	Canadian National Railroad

II. Background Information and Regulatory History

On May 6, 2016, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Fox River, DePere to Oshkosh, WI, in the Federal Register (81 FR 27373). We did receive one comment on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. Currently, the regulation for Fox River drawbridges (33 CFR 117.1087) includes the opening schedule for drawbridges in Green Bay, WI, where large commercial vessel traffic continues to transit. This rule does not include any changes to the schedules for drawbridges over the commercial ship channel in Green Bay.

The sections of the current regulation that includes all other drawbridges between river mile 7.13 in DePere, WI at the

DePere Pedestrian bridge, to river mile 58.3 in Oshkosh, WI, describe inconsistent dates and times for required drawbridge openings, particularly for the four highway drawbridges in Oshkosh. They also include reference to the George Street bridge at mile 7.27. The George Street bridge has been removed in the past 15 years. In the current regulation, the Oshkosh drawbridges contain exemptions during certain dates and times where the drawbridges are not required to open for vessels or vessels must provide advance notice prior to passing during nighttime hours.

This rule establishes the requirement for all drawbridges, except the Canadian National Railroad (CN-RR) bridge at mile 55.72 in Oshkosh, to open on signal between the hours of 8 a.m. and midnight each day from April 27 to October 7 every year. This schedule will match the lock schedule established by FRNSA and drawbridge schedules used by WIS-DOT. Between the hours of midnight and 8 a.m., except for the CN-RR bridge in Oshkosh, all drawbridges would open for vessels if at least 2-hours advance notice of arrival is provided.

The CN-RR bridge at mile 55.72 in Oshkosh is located where Fox River feeds into the southwest section of Lake Winnebago. The portion of Fox River in the Oshkosh area, and Lake Winnebago, are among the busiest portions of the Fox River System for recreational vessel traffic. The CN-RR bridge provides 6 feet of vertical clearance in the closed

position and prevents most vessels from passing under the bridge, thereby requiring the drawbridge to open regularly for vessels. This is also the location of first responders and public safety vessels that may require the bridge to open at any time to perform rescue or emergency operations on Lake Winnebago. Vessels in distress or seeking shelter from weather on Lake Winnebago may also need the CN-RR bridge to open at any time. A delay in bridge openings at this location may endanger life or property and is therefore exempted from the proposed 2-hour advance notice requirement from vessels for all other drawbridges between midnight and 8 a.m.

All drawbridges would be required to open if at least 12-hours advance notice is provided prior to passing between October 8 and April 26 each year.

This rule removes the George Street bridge from the regulation, establishes consistent annual dates for drawbridge schedules between river miles 7.13 and 58.3, eliminates currently exempted bridge opening times during certain days and times in Oshkosh, makes permanent the requirement for vessels to provide 2-hours advance notice between midnight and 8 a.m., and establishes the winter bridge operating schedules throughout the entire river system.

The dates, times, and conditions have been employed by local authorities for approximately 10 years and are generally accepted by vessel operators in the area as established

conditions. The dates, times, and conditions have also been reviewed and accepted by WIS-DOT and FRNSA during the development of this rule.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 45 days and received one comment. Canadian National Railway Company (CN-RR) wished to clarify for the record that the bridge described in the NPRM as the "CN-RR bridge at Mile 55.72 over Fox River in Oshkosh, WI" should reflect Wisconsin Central Ltd. as the entity holding common carrier responsibilities at this location. The Coast Guard recognizes that Wisconsin Central, Ltd. is owned by CN-RR, but for consistency in describing bridge owners throughout the Fox River system in official publications, and since the bridges are locally known and referred to as "Canadian National" bridges, we will continue to describe the railroad drawbridge at Mile 55.72 in Oshkosh as the CN-RR bridge.

Additionally, CN-RR commented on the disparity of proposed bridge operations between nearby highway bridges and the CN-RR bridge at Mile 55.72 in Oshkosh, WI. The NPRM excluded the CN-RR bridge at Mile 55.72 in Oshkosh from operating with the same schedule as the nearby highway bridges requiring 2-hours advance notice for openings between the hours of midnight and 8am due to the low vertical clearance (6-feet) of the bridge in the closed position that restricts

most vessels from passing underneath, the proximity of the CN-RR bridge at the entrance to Fox River from Lake Winnebago, the location of nearby first-responders, and the need to open for vessels seeking shelter from weather on Lake Winnebago. The exclusion of the CN-RR bridge from the same conditions as the nearby highway bridges in Oshkosh is due to safety concerns for vessel operators and is retained in this final rule.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice during times when vessel traffic is at its lowest. This rule provides a drawbridge schedule that is virtually the same as has been used by vessel operators in the area for approximately 10 years.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule standardizes drawbridge schedules that have been in place and would not have a significant economic impact on any vessel owner or operator because the bridges will open with advance notice during low traffic times on the waterway or when ice conditions hinder normal navigation.

While some owners or operators of vessels intending to

transit the bridges may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-

3520) .

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or

more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.1087, revise paragraphs (b) and (c) to read as follows:

§ 117.1087 Fox River.

* * * * *

(b) All drawbridges between mile 7.13 in DePere and mile 58.3 in Oshkosh, except the Canadian National Railroad bridge at mile 55.72, shall open as follows:

(1) From April 27 through October 7, the draws shall open on signal, except between the hours of midnight and 8 a.m., the draws shall open if at least 2-hours advance notice is given.

(2) From October 8 through April 26, the draws shall open

if at least 12-hours advance notice is given.

(c) The draw of the Canadian National Railroad bridge at mile 55.72 shall open on signal, except from October 8 through April 26; the draw shall open if at least 12-hours advance notice is given.

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Dated: July 12, 2016

J. E. RYAN
Rear Admiral, U. S. Coast Guard
Commander, Ninth Coast Guard District

